IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 121 OF 2004

Paradigm Hotels
Private Limited, a
Company incorporated under
the Companies Act, 1956,
and having its registered
office at 7th Floor,
Kailesh Bldg., 26,
Kasturba Gandhi Marg,
New Delhi - 110 001. ... Petitioner

Versus

EDC Limited, (a
Government of Goa
Financial and Investment
Corporation), having its
registered office at Dr.
Atmaram Borkar Rd.,
Panaji, Goa. ... Respondent.

Shri S. K. Kakodkar, Senior Advocate with Shri Joel J. D'Souza, advocate for the petitioner.

Shri M.S. Sonak with Ms. Pooja Bharne, advocates for the respondent.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.
DATE : 28th April, 2004.

ORAL ORDER (Per D.G. Karnik, J.)

In pursuance to a notice before admission issued by this Court on 25th March, 2004, the respondent has appeared and filed affidavit in reply. We have heard learned counsel for the parties extensively and are disposing of the petition at the stage of admission itself, with the consent of the learned counsel.

2. By this petition the petitioner seeks a writ of mandamus, or any other appropriate writ or order or direction under Article 226 of the Constitution of India, directing the

respondent to forthwith accept the petitioner's tender for purchase of the property for Rs.2,70,00,000/- only.

3. The respondent is a Government Corporation governed by the provisions of the State Financial Corporation Act. It sanctioned a loan of Rs.4,00,00,000/- to M/s. Anderson Marine (hereinafter referred to as "the borrower"). An amount of approximately Rs.6,98,00,000/- (inclusive of interest) was outstanding as in November, 2003. As the borrower failed to repay the loan as per the agreed terms, the respondent took over the assets of the borrower under Section 29 of the State Financial Corporation Act, on or about 27th November, 2003. A notice for auction of the borrower's assets consisting of land, building, plant and machinery was published in the "Navhind Times" on December 27, 2003. Clause No. 6 of the tender notice specified that the tender documents containing the terms and conditions were available for sale for Rs.150/-. In pursuance of the said tender notice, the petitioner purchased the tender document and submitted the tender to purchase the assets of the borrower for a sum of Rs.2,70,00,000/-. The tenders were opened on 7th January, 2004, and the petitioner was found to be the highest tenderer. However, the petitioner's tender was not accepted and its representative was told that the decision would be communicated later. By a letter dated 21st January, 2004, the petitioner was informed that his tender could not be accepted. The petitioner has challenged this communication in this Writ

Petition and has sought a writ of mandamus directing that he being the highest bidder, his tender should be accepted.

4. In our opinion, the tender notice published in the newspaper on December 27, 2003, was only an invitation to an offer. The tender submitted by the petitioner to purchase the borrower's assets constituted an offer and the binding contract would have come into existence only if the offer was accepted. The respondent was not bound to accept the offer submitted by the petitioner merely because it was the highest offer. Ofcourse, the respondent could not have accepted any offer less than the offer made by the petitioner, in view of the decision of the Apex Court in **Ramana Dayaram Shetty vs. International Airport Authority of India**, reported in 1979 (3) SCC 489.

5. Shri Kakodkar, the learned Senior Counsel appearing for the petitioner submits that in the tender advertisement published in the newspaper dated December 27, 2003, the respondent had not reserved in itself the right to refuse any tender and, therefore, the respondent was bound to accept the highest tender. Clause no.6 of the tender notice specifically stated that interested parties should purchase the tender documents which contained the terms and conditions of the tender. Condition no.16 in the tender documents, submitted by the petitioner, specifically states that the respondent had reserved in itself the right to accept or

reject any offer without assigning any reason. It is, therefore, fallacious to contend that the respondent had not reserved a right to reject the highest offer.

6. Shri Kakodkar, the learned Senior Counsel for the petitioner contends that the respondent did not exercise the right to reject the tender fairly. The respondent did not follow the proper procedure for rejecting the highest offer made by the petitioner and the procedure followed by the respondent was not transparent. Relying upon the judgment of the Apex Court in **Haryana Financial Corporation & Anr. vs. Jagdamba Oil Mills & Anr.**, reported in (2002)3 SCC 496, Shri Kakodkar submits that the respondent was under an obligation to act fairly; the decision to accept or not to accept the tender, whether administrative or quasi-judicial, must be reached by acting fairly. The respondent had not reached the said decision fairly and the respondent was acting only for the purpose of protecting the borrower and giving him an undue opportunity to settle the dues of the respondent Corporation. The learned counsel also invites our attention to the statements made in paragraph 4 (i) of the affidavit in reply filed by Shri Arvind Ghatkar, Deputy General Manager of the respondent. In paragraph 4 (i) of the affidavit, it is stated that the respondent wanted to afford an opportunity to the borrower to match the bid made by the highest tenderer. It is further stated that this policy has been consistently followed by the respondent Corporation since the decision of the Apex

Court in the case of **Mahesh Chandra vs. Regional Manager, U.P. Financial Corporation & Anr.,** reported in (1993) 2 SCC 279. Shri Kakodkar, learned Senior Counsel for the petitioner emphasises that the judgment of the Apex Court in **Mahesh Chandra's** case (supra), has been overruled by a Larger Bench in the case of **Harayana Financial Corporation & Anr. vs. Jagdamba Oil Mills & Anr.** (supra). It was therefore erroneous on the part of the respondent to give an opportunity to the borrower to match the bid made by the petitioner and, therefore, the ground on which the petitioner's highest bid was rejected was improper and also the practice followed by the petitioner of giving an opportunity to the borrower to match the bid was not fair. We have perused the affidavit made by Shri Arvind Ghatkar as a whole. The affidavit itself says that though the decision of the Supreme Court in **Mahesh Chandra's** case (supra) has been overruled by a Larger Bench, the approach of the respondent Corporation has to be fair and public-oriented and, therefore, it has consistently followed the practice of giving an opportunity to the borrower of matching the bid made by the highest tenderer. In **Mahesh Chandra's** case (supra), the Apex Court held that if the borrower is willing to offer the sale price as offered by the tenderer, then he should be offered the same facility and the unit should be transferred to him. The effect of setting aside of that decision by a Larger Bench is that the respondent Corporation would not be bound to give such opportunity to the borrower, but that does not mean that the

respondent is prohibited from giving such an opportunity. If the respondent Corporation has been following such a practice consistently in respect of all the borrowers, as is stated in the affidavit, it cannot be said that the procedure of the respondent is not transparent or is unfair. May be that the respondent is not bound to give such an opportunity, but that does not mean that by giving an opportunity the respondent is being unfair.

7. It must also be noted that in the present case the respondent did not give an unconditional opportunity to the borrower to match the bid made by the petitioner. The respondent appointed a valuer who submitted valuation report for the plant and machinery on 15th December, 2003, and for the land and buildings on 29th December, 2003. The valuer valued the assets at Rs.3,42,00,000/-. In paragraph 4 (j) of the affidavit in reply it is stated that the borrower offered to settle the loan account by paying an amount of Rs.3,24,00,000/-. The respondent considered the offer and found that the amount was less than the valuation of the property as determined by the valuer. Hence the Board of Directors of the respondent Corporation declined to accept the offer of the borrower but decided to make a counter offer to the borrower to settle the dues at Rs.3,61,00,000/-, plus interest. The tender submitted by the petitioner was also considered by the Disposal of Assets Committee of the respondent which decided not to accept the petitioner's offer

but to invite, if the need be, second tender with reserve price of Rs.3,00,00,000/-. The Committee reported that accepting petitioner's tender would be prejudicial to the interest of the respondent. These facts disclose that the respondent declined to accept the offer of the petitioner to purchase the property for Rs.2,70,00,000/- not with a view to favour the borrower, as is alleged by the learned counsel for the petitioner, but for good reasons and to protect the interest of the respondent.

8. The matter came up for hearing before us on 27th April, 2004, when, after perusing the affidavit in reply filed by the respondent, the learned Senior Counsel for the petitioner made an offer to purchase the borrower's assets for Rs.3,70,00,000/- and the matter was adjourned to today to enable the respondent to consider the said offer. The learned counsel for the respondent submitted that as per the decision of the Board, the respondent has already made an offer to the borrower to settle at Rs.3,61,00,000/- plus interest and the offer was valid till 30th April, 2004. In view of this, the respondent was not in a position to accept the offer of the petitioner. The learned for the respondent Corporation further states that in the event of the borrower failing to make the payment of Rs.3,61,00,000/- plus interest by 30th April, 2004, the respondent intends to invite fresh tenders, wherein the petitioner can participate. The learned counsel states that the respondent Corporation is satisfied that the

value of the property is more than Rs.3,42,00,000/- and, therefore, the tender submitted by the petitioner to purchase the assets at Rs.2,70,00,000/- was rightly not accepted and this decision of not accepting the offer was reached by the respondent Corporation after due deliberation. Learned counsel for the respondent invited our attention to the observations made in paragraph no.10 of the judgment of the Apex Court in the case of **Haryana Financial Corporation vs. Jagdamba Oil Mills** (supra), to the following effect:-

> "In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have 'a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred' (as per Lord Diplock in **Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside,** 4 All ER at pg.695f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene."

The respondent Corporation had two options before it, one to accept the highest offer made by the petitioner, which was very much lower than the valuation made by the respondent's valuer or to re-tender, subject ofcourse to the offer made by the respondent Corporation to the borrower to settle the dues for the sum of Rs.3,61,00,000/- plus interest. The decision taken by the respondent of not accepting the tender of the petitioner cannot be said to be so unreasonable a view that no

reasonable person could have taken such a view. In the circumstances, the Court cannot substitute its judgment in place of the decision of the respondent and issue mandamus.

9. Assuming that the reasons on which the respondent reached the conclusion of re-auctioning the property were incorrect, in view of the facts of this case, we are not inclined to issue mandamus. Admittedly, the valuation of the property as disclosed by the valuers is Rs.3,42,00,000/-. In the light of this valuation, we cannot issue a writ of mandamus to the respondent to sell the property for a sum of Rs.2,70,00,000/-, as prayed in the petition.

10. The learned counsel for the petitioner further pointed out that the valuation report was obtained by the respondent after the date on which the tenders were submitted. The valuation report was not disclosed and non-disclosure of the report itself was unfair. We do not find anything unfair in not disclosing the valuation report. It is common knowledge that when valuation reports are disclosed purchasers often form cartels and bid at or around the disclosed price, though the market price or potential is higher. We, therefore, do not find anything unfair in not disclosing the valuation at the time of inviting the tenders.

11. The learned Senior Counsel for the petitioner finally submitted that the Court can mould the relief and

issue a mandamus to sell the property to the petitioner in the sum of Rs.3,42,00,000/-. A perusal of the record and also the fact that the petitioner itself had made an offer to purchase the property at the sum of Rs.3,70,00,000/- yesterday, i.e. on 27th April, 2004, leaves us with the impression that the property is much more valuable than Rs.3,42,00,000/-. The respondent is a public body and its funds come from the public exchequer. It has a duty and an obligation to recover the whole of the loans and, if that is not possible, to recover the maximum amount by sale of assets of the borrower. In such circumstances, we cannot issue a mandamus to sell the property at a price which is inadequate.

12. The petition therefore fails and is rejected with costs which we quantify at Rs.10,000/- (rupees ten thousand only).

P. V. HARDAS, J.

D. G. KARNIK, J.

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